

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: 1-7-05

Signature: Denise Camerato

(Denise Camerato)

Docket No.: CDPC-P01-003
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Jeffrey J. Fitzgerald

Application No.: 10/727118

Confirmation No.: 4402

Filed: December 2, 2003

Art Unit: 2661

For: IMPROVING ETHERNET NETWORK
AVAILABILITY

Examiner: Not Yet Assigned

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR 1.47(B)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

In response to the Decision Refusing Status Under 37 CFR 1.47(b) issued on October 28, 2004, applicant hereby addresses the deficiencies as noted in the Decision as follows:

Enclosed herewith is the executed Oath/Declaration naming Jeffrey Fitzgerald as sole inventor. This executed declaration addresses all issues raised in the Decision. A Petition for a one month extension of time with fees is included. A copy of the Decision Refusing Status Under 37 CFR 1.47(b) has been provided with this filing.

In view of the above Request, we believe the pending application satisfies 37 CFR
1.63(a)-(b).

Dated: January 7, 2005

Respectfully submitted,

By 

Edward J. Kelly

Registration No.: 38,936

ROPES & GRAY LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

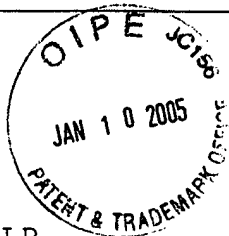
(617) 951-7050 (Fax)

Attorneys/Agents For Applicant



UNITED STATES PATENT AND TRADEMARK OFFICE

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Ropes & Gray

NOV 01 2004

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Intellectual Property Dept.

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OCT 28 2004

OFFICE OF PETITIONS

In re Application of :
Fitzgerald : DECISION REFUSING STATUS
Application No. 10/727,118 : UNDER 37 CFR 1.47(b)
Filed: December 2, 2003 :
Atty. Dkt. No.: CDPC-P01-003 :
For: ETHERNET NETWORK :
AVAILABILITY :

This decision is in response to the petition under 37 CFR 1.47(b),
filed December 7, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 2, 2003 without an executed oath or declaration and naming Jeffrey Fitzgerald as sole inventor. Accordingly, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed March 4, 2004. The Notice required, *inter alia*, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

Ropes & Gray
Symbol #: CDPC - P01-003
Action Due: Resp to Petition
Deadline(s): 28 Dec 04 / 28 Apr 05

The instant petition lacks requirements (1), (2), and (5) set forth above.

As to item (1), petitioner has failed to establish that the non-signing inventor received a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) and thereafter refused to execute an oath or declaration. Petitioner merely states that a declaration was sent to the non-signing inventor via mail and email.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that bona fide effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor or the legal representative of the non-signing inventor. A copy of the application papers should be sent to the last known address of the nonsigning inventor or to the address of the non-signing inventor's attorney. See, MPEP 409.03(d). Any renewed petition must be accompanied by evidence that the inventor, after having been presented with the complete application papers, refused to execute the oath or declaration.

As to item (2), an acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration is unacceptable because it has not been executed on behalf of the non-signing inventor. The declaration should be executed by a corporate officer, such as the president, vice president, secretary, or treasurer of the assignee on behalf of and as agent for the non-signing inventor. The corporate officer's title or position must be identified in the declaration. If an officer is unavailable to execute the declaration, the declaration may be signed on behalf of the corporation by one whose proof of signing authority has been submitted to the Office, such as the corporation's attorney. The signature block of the non-signing inventor should remain unexecuted. Petitioner's attention is directed to MPEP 409.03(b) for further guidance.

Any renewed petition must be accompanied by a properly executed oath or declaration.

As to item (5), petitioner has failed to sufficiently establish a proprietary interest in the instant application. Petitioner must establish that the invention has been assigned to applicant, that the inventor has agreed in writing to assign the invention to applicant, or that applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner must submit a copy of an employment agreement between the inventor and applicant or a legal memorandum

Alesia M. Brown
Petitions Attorney
Office of Petitions



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DECLARATION FOR PATENT APPLICATION

As the below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

IMPROVING ETHERNET NETWORK AVAILABILITY

the specification of which was filed on December 2, 2003 as Application No. 10/727118.

In the event that the filing date and/or Application No. are not entered above at the time I execute this document, and if such information is deemed necessary, I hereby authorize and request my attorneys/agent(s) at **Ropes & Gray LLP**, One International Place, Boston, Massachusetts 02110-2624, to insert above the filing date and/or Application No. of said application.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment, if any, specifically referred to herein.

I acknowledge the duty to disclose all information known to me that is material to patentability in accordance with Title 37, Code of Federal Regulations, § 1.56.

FOREIGN PRIORITY CLAIM

I hereby claim foreign priority benefits under Title 35, United States Code § 119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

☒ no such foreign applications have been filed

☐ such foreign application have been filed as follows:

**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing	Priority Claimed Under 35 USC 119
			___ Yes No ___
			___ Yes No ___
			___ Yes No ___

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing

CLAIM FOR BENEFIT OF EARLIER U.S. PROVISIONAL APPLICATIONS

I hereby claim priority benefits under Title 35, United States Code §119(e), of any United States provisional patent application(s) listed below:

☐ no such U.S. provisional applications have been filed.

☒ such U.S. provisional application have been filed as follows:

Application Number	Date of Filing	Priority Claimed Under 35 USC 119
60/430,720	December 3, 2002	<u> x </u> Yes No ___
		___ Yes No ___
		___ Yes No ___

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)

I hereby claim the benefit under Title 35, United States Code, §120 of the United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information that is material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56 which became available to me between the filing date of the prior application and the national or PCT international filing date of this application:

☒ no such U.S./PCT applications have been filed.

☐ such U.S./PCT application have been filed as follows:

Application Number	Relationship	Parent Application	Date of Filing

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint:

All practitioners at Customer Number 28120

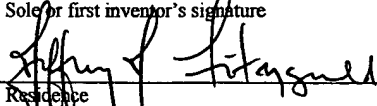
all of **Ropes & Gray LLP**, One International Place, Boston, Massachusetts 02110-2624, jointly, and each of them severally, my attorneys at law/patent agent(s), with full power of substitution, delegation and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the U. S. Patent and Trademark Office connected therewith.

Please mail all correspondence to Edward J. Kelly, whose address is:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110-2624

Please direct telephone calls to: Edward J. Kelly at (617) 951-7532.

Please direct facsimiles to: (617) 951-7050

Full name of sole or first inventor Jeffrey J. Fitzgerald	
Sole or first inventor's signature 	Date 12/23/04
Residence Amherst, New Hampshire	
Citizenship US	
Mailing Address 3 Tanglewood Way Amherst, New Hampshire 03031	

Full name of second inventor, if any	
Second inventor's signature	Date
Residence	
Citizenship	
Mailing Address	

Full name of third inventor, if any	
Third inventor's signature	Date
Residence	
Citizenship	
Mailing Address	

Full name of fourth inventor, if any	
Fourth inventor's signature	Date
Residence	
Citizenship	
Mailing Address	